

Applicant : Jeannette Whitcomb
Serial No. : 09/663,885
Filed : September 15, 2000
Page 2

antiretroviral therapy;

II. Claims 10-14, drawn to an *in vitro* screening method for identifying putative HIV antivirals; and

III. Claims 15-17, drawn to a resistance test vector comprising an HIV-infected patient segment.

In response, applicant hereby elects Group I, claims 1-9, with traverse for prosecution at this time.

REMARKS

Applicant, however, respectfully requests that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination can be made without serious burden.

The inventions of Groups I-III are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-III are all drawn to assessing the effectiveness of antiretroviral therapy in the treatment of HIV/AIDS. Applicant therefore maintains that Groups I-III are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to

Applicant : Jeannette Whitcomb
Serial No. : 09/663,885
Filed : September 15, 2000
Page 3

distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups II and III would not require a serious burden once the prior art relevant to Group I has been identified.

Therefore, there would be no serious burden on the Examiner to examine Groups I-III together in the subject application. Hence, the Examiner must examine these Groups on the merits.

In view of the foregoing, applicant maintains that restriction is not proper under 35 U.S.C. §121 and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.

Applicant : Jeannette Whitcomb
Serial No. : 09/663,885
Filed : September 15, 2000
Page 4

No fee, other than the enclosed \$200.00 for a two-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents Washington, D.C. 20231.

Alan J. Morrison
Reg. No. 37,399

Date

11/15/02

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